

2013 DRAFTING REQUEST

Bill

Received: 6/7/2013 Received By: phurley
 Wanted: As time permits Same as LRB:
 For: André Jacque (608) 266-9870 By/Representing: Jamie Julian
 May Contact: Drafter: phurley
 Subject: Drunk Driving - refusals/testing Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Rep.Jacque@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Allow search warrants in order to draw blood in civil OWI cases

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	phurley 6/26/2013	scalvin 6/24/2013	jmurphy 6/25/2013	_____	sbasford 6/25/2013		State S&L
/1		scalvin 6/26/2013	phenry 6/27/2013	_____	lparisi 6/27/2013	mbarman 7/23/2013	State S&L

FE Sent For:

<END>

@ intro

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/P1	phurley 6/20/2013	scalvin 6/24/2013	jmurphy 6/25/2013	_____	sbasford 6/25/2013		State S&L
FE Sent For:		11 SAC 06/26/2013	6/27 ph X				
<END>							

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/P1	phurley						

Jim
6/24
Self

FE Sent For:

<END>

Hurley, Peggy

From: Julian, Jamie
Sent: Friday, June 07, 2013 12:23 PM
To: Hurley, Peggy
Subject: Recent Drafting Request Re Search Warrant associated with first OWI

Hi,

Please review the idea below – this is where Rep. Jacque would like to go. Feel free to return a P draft or suggest a better way to accomplish this in statute if this is too awkward.

Per our discussion on the phone, suggested language (**bold**) would allow law enforcement to obtain a search warrant to draw blood for an OWI-1st. (Due to a recent decision by the Supreme Court, law enforcement must obtain a search warrant to forcibly draw blood from an individual arrested for OWI, unless there is an exigency which would allow for a forced blood draw without a warrant. The McNeely cases states that dissipation of alcohol in the blood stream by itself is not an exigency. Therefore, in a standard WI OWI case an officer would have to get a search warrant prior to a forced blood draw upon the individual's refusal to voluntarily submit to a chemical test.

As our law sits right now, a search warrant can only be obtained for the seizure of contraband or evidence/documents/fruits of a crime. Since OWI-1st is not a crime in Wisconsin and it is unclear if the blood of a person arrested for OWI is "contraband," officers have been advised against getting a search warrant for a forced blood draw for OWI-1st.

968.13 Search warrant; property subject to seizure.

(1) A search warrant may authorize the seizure of the following:

(a) Contraband, which includes without limitation because of enumeration lottery tickets, gambling machines or other gambling devices, lewd, obscene or indecent written matter, pictures, sound recordings or motion picture films, forged money or written instruments and the tools, dies, machines or materials for making them, and controlled substances, as defined in s. 961.01 (4), and controlled substance analogs, as defined in s. 961.01 (4m), and the implements for smoking or injecting them. Gambling machines or other gambling devices possessed by a shipbuilding business that complies with s. 945.095 are not subject to this section.

(b) Anything which is the fruit of or has been used in the commission of any crime **or violation of s. 346.63, or a local ordinance in conformity therewith.**

(c) Anything other than documents which may constitute evidence of any crime **or violation of s. 346.63, or a local ordinance in conformity therewith.**

(d) Documents which may constitute evidence of any crime, if probable cause is shown that the documents are under the control of a person who is reasonably suspected to be concerned in the commission of that crime under s. 939.05 (2).

(2) In this section, "documents" includes, but is not limited to, books, papers, records, recordings, tapes, photographs, films or computer or electronic data.

Jamie Julian

Office of Rep. André Jacque
2nd Assembly District

Room 123 West
State Capitol
P.O. Box 8952

Madison, WI 53709

(608) 266-9870



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2511/P1

PJH:/:....

sac

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

6.20
J. note

1 AN ACT ^{gen cat} relating to: obtaining a search warrant for certain civil violations.

Analysis by the Legislative Reference Bureau

Under current law, a court may authorize a search warrant that allows a law enforcement officer to search and seize anything that is the fruit of, or has been used in, the commission of a crime or that may constitute evidence of a crime, if the court finds probable cause to believe that the search will yield evidence of the crime.

^{officer} This bill allows a court, upon finding probable cause, to authorize a search warrant that allows a law enforcement officer to search and seize anything that is the fruit of, or has been used in, the commission of a crime or of a civil violation of the prohibitions against driving while having a prohibited alcohol concentration or while under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 968.13 (1) (b) of the statutes is amended to read:

3 968.13 (1) (b) Anything which is the fruit of or has been used in the commission

4 of any crime or of a violation of s. 346.63 or a local ordinance in conformity therewith.

1 **SECTION 2.** 968.13[✓] (1) (c) of the statutes is amended to read:

2 968.13 (1) (c) Anything other than documents which may constitute evidence
3 of any crime or of a violation of s. 346.63[✓] or a local ordinance in conformity therewith.

History: 1971 c. 219; 1979 c. 81; 1995 a. 11, 448. ✓

4 **SECTION 3.** 968.23 of the statutes is amended to read:

5 **968.23 Forms.** The following forms for use under this chapter are illustrative
6 and not mandatory:

7 STATE OF WISCONSIN,

8 County.

9 AFFIDAVIT OR COMPLAINT.

10 In the court of the of

11 A. B., being duly sworn, says that on the day of, A. D., (year), in said
12 county, in and upon certain premises in the (city, town or village) of in said county,
13 occupied by and more particularly described as follows: (describe the premises)
14 there are now located and concealed certain things, to wit: (describe the things to be
15 searched for) (possessed for the purpose of evading or violating the laws of the state
16 of Wisconsin and contrary to section of the Wisconsin statutes) (or, which things
17 were stolen from their true owner, in violation of section of the Wisconsin statutes)

18 (or, which things were used in the commission of (or may constitute evidence of) ~~a~~^A
19 ~~crime~~ an offense to wit: (describe ~~crime~~ offense) committed in violation of section
20 of the Wisconsin statutes).

21 The facts tending to establish the grounds for issuing a search warrant are as
22 follows: (set forth evidentiary facts showing probable cause for issuance of warrant).

23 Wherefore, the said A. B. prays that a search warrant be issued to search such
24 premises for the said property, and to bring the same, if found, and the person in

1 whose possession the same is found, before the said court (or, before the court for
2 County), to be dealt with according to law.

3 (Signed) A. B.

4 Subscribed and sworn to before me this day of, (year)

5, Judge of the Court.

6 STATE OF WISCONSIN,

7 County.

8 SEARCH WARRANT.

9 In the court of the of

10 THE STATE OF WISCONSIN, To the sheriff or any constable or any peace
11 officer of said county:

12 Whereas, A. B. has this day complained (in writing) to the said court upon oath
13 that on the day of, A. D., (year), in said county, in and upon certain premises
14 in the (city, town or village) of in said county, occupied by and more
15 particularly described as follows: (describe the premises) there are now located and
16 concealed certain things, to wit: (describe the things to be searched for) (possessed
17 for the purpose of evading or violating the laws of the state of Wisconsin and contrary
18 to section of the Wisconsin statutes) (or, which things were stolen from their true
19 owner, in violation of section of the Wisconsin statutes) (or which things were used
20 in the commission of (or, may constitute evidence of) ~~a~~ ^{an} ~~crime~~ an offense, to wit:
21 (describe ~~crime~~ offense) committed in violation of section of the Wisconsin
22 statutes) and prayed that a search warrant be issued to search said premises for said
23 property.

24 Now, therefore, in the name of the state of Wisconsin you are commanded
25 forthwith to search the said premises for said things, and if the same or any portion

1 thereof are found, to bring the same and the person in whose possession the same are
2 found, and return this warrant within 48 hours before the said court (or, before the
3 court for County), to be dealt with according to law.

4 Dated this day of, (year)

5 , Judge of the Court.

6 **ENDORSEMENT ON WARRANT**

7 Received by me, (year), at o'clockM.

8 , Sheriff (or peace officer)

9 **RETURN OF OFFICER**

10 State of Wisconsin

11 Court,

12 County.

13 I hereby certify that by virtue of the within warrant I searched the within
14 named premises and found the following things: (describe things seized) and have
15 the same now in my possession subject to the direction of the court.

16 Dated this day of, (year)

17 , Sheriff (or peace officer)

18 **History:** 1997 a. 250.

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2511/P1dn

PJH:/:....

SAC

- date -

Jamie,

Please review this draft to ensure it is consistent with your intent. When the draft meets your approval, I can redraft in introducible form. If you have any questions, concerns, or would like any changes to the draft, please let me know.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2511/P1dn
PJH:sac:jm

June 25, 2013

Jamie,

Please review this draft to ensure it is consistent with your intent. When the draft meets your approval, I can redraft in introducible form. If you have any questions, concerns, or would like any changes to the draft, please let me know.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2511/1

PJH:sac:jm

2013 BILL

62513

amend

- 1 AN ACT to amend 968.13 (1) (b), 968.13 (1) (c) and 968.23 of the statutes;
2 relating to: obtaining a search warrant for certain civil violations.

Analysis by the Legislative Reference Bureau

Under current law, a court may authorize a search warrant that allows a law enforcement officer to search and seize anything that is the fruit of, or has been used in, the commission of a crime or that may constitute evidence of a crime, if the court finds probable cause to believe that the search will yield evidence of the crime.

This bill allows a court, upon finding probable cause, to authorize a search warrant that allows a law enforcement officer to search and seize anything that is the fruit of, or has been used in, the commission of a crime or of a civil violation of the prohibitions against driving while having a prohibited alcohol concentration or while under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 968.13 (1) (b) of the statutes is amended to read:

BILL**SECTION 1**

1 968.13 (1) (b) Anything which is the fruit of or has been used in the commission
2 of any crime or of a violation of s. 346.63 or a local ordinance in conformity therewith.

3 **SECTION 2.** 968.13 (1) (c) of the statutes is amended to read:

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14 county, in and upon certain premises in the (city, town or village) of in said county,
15 occupied by and more particularly described as follows: (describe the premises)
16 there are now located and concealed certain things, to wit: (describe the things to be
17 searched for) (possessed for the purpose of evading or violating the laws of the state
18 of Wisconsin and contrary to section of the Wisconsin statutes) (or, which things
19 were stolen from their true owner, in violation of section of the Wisconsin statutes)
20 (or, which things were used in the commission of (or may constitute evidence of) ~~a~~
21 ~~crime~~ an offense to wit: (describe ~~crime~~ offense) committed in violation of section
22 of the Wisconsin statutes).

23 The facts tending to establish the grounds for issuing a search warrant are as
24 follows: (set forth evidentiary facts showing probable cause for issuance of warrant).

BILL

1 Wherefore, the said A. B. prays that a search warrant be issued to search such
2 premises for the said property, and to bring the same, if found, and the person in
3 whose possession the same is found, before the said court (or, before the court for
4 County), to be dealt with according to law.

5 (Signed) A. B.

6 Subscribed and sworn to before me this day of, (year)

7 , Judge of the Court.

8 STATE OF WISCONSIN,

9 County.

10 SEARCH WARRANT.

11 In the court of the of

12 THE STATE OF WISCONSIN, To the sheriff or any constable or any peace
13 officer of said county:

14 Whereas, A. B. has this day complained (in writing) to the said court upon oath
15 that on the day of, A. D., (year), in said county, in and upon certain premises
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24 statutes) and prayed that a search warrant be issued to search said premises for said
25 property.

BILL

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Dated this day of, (year)

...., Judge of the Court.

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Received by me, (year), at o'clockM.

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RETURN OF OFFICER

State of Wisconsin

.... Court,

.... County.

I hereby certify that by virtue of the within warrant I searched the within named premises and found the following things: (describe things seized) and have the same now in my possession subject to the direction of the court.

Dated this day of, (year)

....., Sheriff (or peace officer)

(END)

Parisi, Lori

From: Julian, Jamie
Sent: Monday, July 22, 2013 2:50 PM
To: LRB.Legal
Subject: Draft Review: LRB -2511/1 Topic: Allow search warrants in order to draw blood in civil OWI cases

Please Jacket LRB -2511/1 for the ASSEMBLY.